

## **Rule 9013-1. Motions.**

**(A) Preamble.** This rule applies to all motion practice. Subdivision (B) describes the form, content, and service of motions. Local Rule 9073-1 describes the procedures to be followed where a hearing is required by these rules or the Bankruptcy Rules or requested by a party in interest. Local Rule 9075-1 describes the procedures to be followed in emergency motion practice. Subdivision (C) describes matters which may be considered by the court, ex parte, without conducting a hearing. Subdivision (D) describes matters which may be considered by the court without a hearing, provided the motion contains a specified bulletin and is served on all required parties and no objections are filed or served. Subdivision (E) describes matters which may be considered by the court in dismissed or closed cases. Subdivisions (F) through (K) address expedited hearings for certain motions in chapter 11 cases.

**(B) Form, Content, Service of Motions.** The form of motions and other requests for court action or relief is governed by Local Rules 5005-3, 5005-4, 9004-1, 9004-2, 9011-4, and 9072-1. All motions must state with particularity the grounds for the motion and must request specific relief.

**(C) Motions Which May Be Considered Without a Hearing (Ex Parte Motions).** Unless otherwise directed by the court, no hearing is required for the following motions, or for any other motion for which the Bankruptcy Rules or these rules provide that no hearing is necessary. The moving party shall follow the procedure in Local Rule 5005-1(G)(1)(a), not the procedure in Local Rule 9073-1. Upon entry of an order, the motion and entered order must be served as required by these rules. This subdivision is not intended to restrict a judge's authority to grant relief without a hearing on other motions.

- (1)** Motions in which the movant certifies that all affected parties have consented to the requested relief.
- (2)** Motions to extend the time for filing schedules, statements, or lists, where the requested extended deadline is not later than 5 days before the § 341 meeting or post-conversion meeting. The motion must be served on the debtor, the trustee, the U.S. trustee, and all parties who have requested notices. In a chapter 11 case, where applicable, the notice must also be served on the parties listed on the "Master Service List" filed pursuant to Local Rule 2002-1(K). The date of the § 341 meeting or post-conversion meeting shall be set forth in the motion. If no date has yet been set, the motion should state this.

<p>✎ 2002 Amendment: Amended to require movant to indicate in the motion if no date has been set.</p>
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*[Comment: See also Local Rules 1007-1(C) and 1019-1(A) (extension of time to file schedules, statements, and lists).]*

- (3)** Motions to approve employment of professionals, where the motion does not seek

approval of a postpetition retainer or a particular fee arrangement and the motion does not reveal any actual or potential conflict of interest or any other facts that could preclude retention. The motion must be served on the debtor, the trustee, the U.S. trustee, and the attorney for or members of any creditors' committee or, in the absence of a committee, the 20 largest unsecured creditors in a chapter 11 case, and all parties who have requested notices. In a chapter 11 case, when applicable, the notice must also be served on the parties listed on the "Master Service List" filed pursuant to Local Rule 2002-1(K).

*[Comment: See also Local Rules 2014-1 (employment of professionals) and 6005-1 (employment of auctioneers).]*

- (4) Motions to approve employment of real estate brokers, and to fix compensation for brokers, where the motion seeks to fix the compensation at the standard rate charged for similar services. The motion must be served on the debtor, the trustee, the U.S. trustee, and the attorney for or members of any creditors' committee or, in the absence of a committee, the 20 largest unsecured creditors in a chapter 11 case, and all parties who have requested notice. In a chapter 11 case, where applicable, the notice must also be served on the parties listed on the "Master Service List" filed pursuant to Local Rule 2002-1(K).

*[Comment: See also Local Rules 2014-1 and 9013-1(C)(3) (employment of professionals).]*

- (5) Motions to extend time to file objections to claimed exemptions, where the motion reflects that:
  - (a) the debtor has consented to the requested relief;
  - (b) the debtor has failed to appear at a properly scheduled Bankruptcy Rule 2004 examination;
  - (c) the debtor has failed to produce properly requested documents; or
  - (d) despite reasonable diligence by the movant, discovery has been propounded which is not due until after the deadline, or Bankruptcy Rule 2004 examinations have been noticed for a date after the deadline and the discovery is necessary to evaluate whether to file an objection.

Unless the debtor agrees to a longer extension, the requested extension cannot be longer than 30 days after the original (or previously extended) deadline. The motion shall be served on the debtor, the trustee, and any creditor included in the moving party's request for extension.

- (6) Motions to extend time to file complaints objecting to discharge under 11 U.S.C. § 727 or complaints objecting to dischargeability under 11 U.S.C. § 523 but only if the debtor consents to an extension. The motion must indicate in the body if it is an

agreed motion and indicate the date the petition was filed.

*[Comment: See Bankruptcy Rules 4004 and 4007.]*

- (7) Motions to shorten or extend time for responding to discovery requests. The motion must be served on all interested parties or if applicable, pursuant to Local Rule 2002-1(K).

*[Comment: See also Local Rules 4001-1(G) (discovery in stay relief matters), 7016-1 (judges' pre-trial procedures), and 7027-1(D) (depositions).]*

- (8) Motions for continuances of hearings, trials or pre-trial conferences. The motion must be served on all interested parties or if applicable, pursuant to Local Rule 2002-1(K).

*[Comment: See Local Rules 5071-1 (continuance of hearings) and 7090-1 (continuances of trials or pre-trial conferences).]*

- (9) Motions for pro hac vice appearance. The motion must be served on the debtor, the trustee, the U.S. trustee, and all interested parties or if applicable, pursuant to Local Rule 2002-1(K).

*[Comment: See Local Rule 2090-1 (attorneys).]*

- (10) Motions by the chapter 7 trustee to approve sales of property for \$2,000 or less. The motion must be served on the debtor and the U.S. trustee.

*[Comment: See also Bankruptcy Rule 6004 and Local Rule 6004-1 (sales).]*

- (11) Motions to reopen chapter 7 cases to administer additional assets. The motion must be served on the debtor and the U.S. trustee.

*[Comment: See Local Rules 5010-1(C) and 9013-1(D)(3)(j) (reopening closed case).]*

- (12) Motions by debtors to convert under 11 U.S.C. § 706(a) or 11 U.S.C. § 1112(a). The motion must be served on the U.S. trustee and the trustee, if applicable, or when applicable, pursuant to Local Rule 2002-1(K).

- (13) Motions seeking conditional approval of disclosure statements in small business chapter 11 cases. The motion must be served on the U.S. trustee, or when applicable, pursuant to Local Rule 2002-1(K).

- (14) Motions for joint administration of chapter 11 cases.

*[Comment: See Local Rule 3017-2.]*

**(D) Motions Considered on Negative Notice.**

- (1) Introduction.** Certain motions may be considered by the court without a hearing if appropriate notice and an opportunity to object to the relief requested is provided to interested parties (“negative notice”). Local Rules 3007-1(C) (objections to claims), 4001-1(C) (relief from stay), 6004-1(B) (notice of sale), and 6007-1(B)(1) (abandonment of property) have procedures for the use of negative notice. This subdivision (D)(1) applies to matters other than those in Local Rules 3007-1(C), 4001-1(C), 6004-1(B), and 6007-1(B)(1). The option provided in this rule is not intended to limit the court’s discretion to grant or deny relief sooner than 20 days after service of the motion.
- (2) Use of Bulletin; Procedures.** Excepting matters governed by Local Rules 3007-1(C), 4001-1(C), 6004-1(B), and 6007-1(B)(1), whenever the Bankruptcy Code or Bankruptcy Rules provide that an order may be entered “after notice and a hearing” or similar phrase, the motion may include above the preamble and below the title of the motion the following bulletin (in print either highlighted or bold so as to make it more prominent than the remainder of the text):

**NOTICE**

**Any interested party who fails to file and serve a written response to this motion within 20 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be canceled.**

Each motion filed under this subdivision must attach a proposed order as an exhibit thereto. When this bulletin is included in the motion, a party properly served who fails to file a written response thereto within 20 days after service of the motion shall be deemed to have consented to the entry of the order. Within 5 days after the expiration of the 20 day notice period, the moving party shall submit to the court the following: (i) if no response is received or filed, the Local Form “Certificate of No Response or Settlement” and the proposed order granting the relief requested; or (ii) if a response contesting the relief requested is received or filed, the Local Form “Certificate of Contested Matter” accompanied by the Local Form “Notice of Hearing”. If a certificate of contested matter is filed, the court will schedule a hearing in accordance with the procedures contained in Local Rule 9073-1(A). The “Notice of Hearing” shall be served by movant in accordance with the procedures contained in Local Rule 9073-1(C).

- (3) Matters For Which Negative Notice May Be Used.** The following is a non-exclusive list of matters which may be considered without a hearing:

- (a) Motions to compel abandonment of property (Bankruptcy Rule 6007(b));
- (b) Motions to approve compromise or settlement (Bankruptcy Rule 9019);
- (c) Motions to approve accounting by prior custodian (Bankruptcy Rule 6002);
- (d) Motions to extend time to object to exemptions (Bankruptcy Rule 4003(b));
- (e) Motions to temporarily allow claim for voting purposes (Bankruptcy Rule 3018(a));
- (f) Motions to avoid liens on exempt property (Bankruptcy Rule 4003(d));
- (g) Motions to obtain credit (11 U.S.C. § 364);
- (h) Motions to convert case, but not in chapter 13 cases (11 U.S.C. §§ 706(b), 1112(a), and 1208(c));
- (i) Motions to dismiss case, but not in chapter 13 cases (11 U.S.C. §§ 707, 1112(b), and 1208(c));
- (j) Motions to reopen chapter 7 cases to add omitted creditors.

**(4) Matters Not Within Scope of Rule.** The following matters may not be considered by negative notice under Local Rule 9013-1(D):

*[Comment: Compare 11 U.S.C. § 102(1) (definition of “after notice and hearing”) with “after hearing on notice” language used in objections to classification (Bankruptcy Rule 3013), motions to modify plans (Bankruptcy Rule 3019), and motions to extend time to file complaints objecting to discharge or dischargeability (Bankruptcy Rules 4004 and 4007), among others. See also Bankruptcy Rules 1014, 1017(e), 2007(a), 3008, 3012, 3013, and 6008.]*

- (a) objections to claims, motions for relief from stay, notices of use, sale or lease of property, or notices of abandonment;

*[Comment: Separate rules are applicable. See Local Rules 3007-1(C)(objections to claims: 30 days), 4001-1(C) (motions for stay relief: 15 days), 6004-1(B) (notice of sale: 20 days: order not necessary) and 6007-1(B)(1) (notices of abandonment: 15 days: order not necessary).]*

- (b) motions which must be acted upon only “after a hearing on notice”; and
- (c) the following motions:
  - (i) motions to assume or reject executory contracts or unexpired leases, or to compel assumption or rejection;

- (ii) motions to use, sell, or lease property except motions by a chapter 7 trustee to sell property for \$2,000 or less as described in subdivision (C)(10) of this rule;

*[Comment: See Bankruptcy Rule 6004; see also Local Rule 6004-1(B)(notice of sale).]*

- (iii) motions to approve employment of professionals except those described in subdivision (C)(3) of this rule;

*[Comment: See Bankruptcy Rule 2014.]*

- (iv) motions to extend exclusivity period;

*[Comment: See 11 U.S.C. § 1121(d).]*

- (v) motions for payment of administrative expenses, including professional fees;

*[Comment: See 11 U.S.C. § 503(a), § 330 and § 331, but see special notice requirements in Bankruptcy Rule 2002(e)(2) and Local Rule 2002-1(C)(9).]*

- (vi) motions to appoint trustee or examiner;

*[Comment: See 11 U.S.C. § 303(g) or § 1104.]*

- (vii) motions to convert or dismiss chapter 13 cases;

*[Comment: See 11 U.S.C. § 1307.]*

- (viii) motions which seek alternative relief;

- (ix) motions to modify chapter 13 plans;

- (x) motions for joint administration in cases other than chapter 11; and

- (xi) motions to dismiss involuntary cases for failure to appear at the meeting of creditors.

**(E) Motions Filed In Dismissed or Closed Cases; Motions to Rehear, Reconsider or Vacate Orders Dismissing Chapter 13 Cases.**

- (1) **Dismissed Cases.** Motions filed in dismissed cases or proceedings, except motions to reconsider the dismissal, shall be processed in accordance with the directions of the judge assigned to the case or proceeding.

- (2) **Closed Cases.** The clerk may return without docketing (to the moving party) any

motion which is filed after the administrative closing of the case or proceeding, except a motion to reopen or a motion specifically authorized by the order disposing of the case or proceeding.

**(3) Motions to Rehear, Reconsider or Vacate Orders Dismissing Chapter 13 Cases.**

A motion to rehear, reconsider or vacate an order dismissing a chapter 13 case must be:


- (a)** If filed by an attorney, accompanied by a certificate which states that the debtor has tendered to the attorney all funds required to be paid under the debtor's plan to bring the plan current as of the date of the motion and that said funds are in the attorney's trust account; or
- (b)** If the debtor is not represented by counsel, accompanied by a photocopy of the cashier's check(s) or money order(s), made payable to the chapter 13 trustee, which will be tendered to the chapter 13 trustee by the debtor to bring the plan current if the case is reinstated.

Motions in chapter 13 cases complying with this provision shall be scheduled for hearing before the respective judge at the monthly chapter 13 calendar or, at the judge's discretion, set for hearing on an emergency basis. Motions not in compliance with these provisions will be denied without further notice or hearing.

In addition, a dismissed chapter 13 case shall not be reopened unless the debtor is current under the previously confirmed plan as of the hearing on the debtor's motion to rehear, reconsider or vacate an order of dismissal.

*[Comment: See Bankruptcy Rule 1017 and Local Rules 1017-2 (dismissal), 5005-1 (filing and transmittal of papers), and Local Rule 5010-1(D) (reopening chapter 13 cases), and 11 U.S.C. § 350 (closing case).]*

**(F) Expedited Hearings for Certain Motions Filed in Chapter 11 Cases.** The motions specified in subdivisions (G), (H), (I), (J), and (K) of this Rule filed in a chapter 11 case shall be filed in accordance with Local Rule 9073-1(A), scheduled for hearing within 2 business days if reasonably possible and served, as applicable, pursuant to Local Rules 2002-1(K) or 9073-1(C). If the judge assigned to the case is unable to hear the motions within 2 business days, the motions shall be scheduled by the clerk, whenever possible, before the judge's designated alternative judge within the required time.

 2002 Amendment: New rule to provide for expedited hearings for certain motions in chapter 11 Cases.

**(G) Motion Seeking Authority to Use Cash Collateral.** A motion seeking authority to use cash collateral pursuant to 11 U.S.C. § 363 shall comply with Bankruptcy Rule 4001(b) or (d) and

must identify:

- (1) the secured creditor having a security interest in the cash collateral;
- (2) the basis upon which the secured creditor is entitled to assert a security interest in the cash collateral;
- (3) the amount owed to the secured creditor;
- (4) whether the debtor is waiving claims against the secured creditor and validating the secured creditor's security interest in its collateral;
- (5) the period of time from and after the appointment of a committee pursuant to 11 U.S.C. § 1102 that such committee will have to analyze and object to the validity, priority and extent of the secured creditor's liens;
- (6) that the waiver is not binding on a subsequently appointed trustee in the case; and
- (7) if the debtor seeks the use of cash collateral sooner than 15 days after service of the motion, the amount of cash collateral which the debtor seeks authority to use from the date of the preliminary hearing on the motion through and until the final hearing on the motion.

The motion shall have as an attachment a budget setting forth the projected cash flow of the debtor for the period of time for which the use of cash collateral is sought.

 2002 Amendment: New rule to provide for requirements for motions seeking authority to use of cash collateral for which expedited hearings will be set pursuant to Local Rule 9013-1(F).

**(H) Motions for Approval of Postpetition Financing.** A motion seeking approval of postpetition financing pursuant to 11 U.S.C. § 364 shall comply with Bankruptcy Rule 4001(c) and (d) and must identify:

- (1) the creditor from which the debtor is seeking authority to obtain credit;
- (2) the collateral in which the creditor is seeking to obtain a security interest, if any;
- (3) the amount of the loan proposed to be extended by the creditor;
- (4) the applicable interest rate and payment terms of the proposed credit; and
- (5) if the debtor seeks authority to obtain credit sooner than 15 days after service of the



motion, the amount of credit which the debtor seeks authority to obtain from the date of the preliminary hearing on the motion through and until the final hearing on the motion.

The motion shall have as an attachment a budget setting forth the projected cash flow of the debtor for the period of time for which the credit is sought.

✎ 2002 Amendment: New rule to provide for requirements for motions for approval of postpetition financing for which expedited hearings will be set pursuant to Local Rule 9013-1(F).

**(I) Motions for Authority for the Payment of Prepetition Wages.** A motion seeking authority to pay employees of the debtor prepetition wages outstanding as of the petition date shall

- (1) include a schedule setting forth:
  - (a) the name of each employee to whom such wages are sought to be paid;
  - (b) the amount due such employee as of the petition date;
  - (c) the amounts to be withheld from such wages, including all applicable payroll taxes and related benefits;
  - (d) the period of time for which prepetition wages are due;
  - (e) whether the employee is presently employed by the debtor; and
- (2) identify whether any of the employees constitute insiders as defined in 11 U.S.C. § 101(31).

The motion shall also include a representation by the debtor that all applicable payroll taxes and related benefits due to the debtor's employees will be paid concurrently with payment of the wages.

✎ 2002 Amendment: New rule to provide for requirements for motions for the authority for payment of prepetition wages for which expedited hearings will be set pursuant to Local Rule 9013-1(F).

**(J) Motions for Authority to Maintain Prepetition Bank Accounts.** A motion seeking authority to maintain prepetition bank accounts shall include:

- (1) a schedule listing each prepetition bank account which the debtor seeks to maintain

postpetition;

- (2) the amount on deposit in each such account as of the petition date; and
- (3) whether the depository is an authorized depository pursuant to 11 U.S.C. § 345(b).

If the debtor is unable to provide the foregoing information, the motion shall set forth the reason why such information is not available, and provide an estimate as to when the debtor shall be able to supplement its motion with such information.

✎ 2002 Amendment: New rule to provide for requirements for motions for authority to maintain prepetition bank accounts for which expedited hearings will be set pursuant to Local Rule 9013-1(F).

**(K) Motions for Authority to Pay Prepetition Claims.** A motion seeking authority to pay prepetition claims deemed critical by the debtor shall include:

- (1) a schedule of the names of each claimant;
- (2) the amount due each claimant;
- (3) a description of the goods or services provided to the debtor by each claimant;
- (4) facts and law supporting payment of the prepetition debt under the doctrine of necessity; and
- (5) whether the claimant has made any concession or other agreement in consideration for the proposed payment, including the extension of postpetition trade credit.

✎ 2002 Amendment: New rule to provide for requirements for motions for authority to pay prepetition claims deemed critical by the debtor for which expedited hearings will be set pursuant to Local Rule 9013-1(F).